S.B.CRIMINAL LEAVE TO APPEAL NO.44/2007
(State Vs. Ramchandra & others)

DATED : 28th February 2007

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.B.L.Bhati, Public Prosecutor

Having heard the learned Public Prosecutor, having examined the impugned judgment and order dated 23.06.2006 and having gone through the evidence as placed for perusal by the learned Public Prosecutor, this Court is clearly of opinion that this petition for leave to appeal remains baseless and deserves to be rejected.

The accused were tried for offences under Sections 498A and 323/34 IPC on the charge-sheet filed after investigation on a written complaint made by PW-1 Pukhraj Patel on 28.06.2002 alleging that his daughter Naini Devi was subjected to harassment and physical assaults on the demand of dowry by her husband, father-in-law and mother-in-law.

After trial, the learned Magistrate has acquitted the accused with the finding that the prosecution has failed to substantiate the charges beyond reasonable doubt, inter alia, for the reasons that there were contradictions and inconsistencies in the statements of the wife Naini Devi PW-2, her father Pukhraj, PW-1 and her mother Parvati Devi PW-4; that the suggestion of the complainant about Naini Devi having

been subjected to assault and having remained unconscious for three days being not corroborated by the medical evidence; that first information report was made after four days of alleged incident and such delay was not explained; and that an application under Section 9 of the Hindu Marriage Act has been filed by the husband accused Ramchandra before the Family Court, Jodhpur. The view taken by the learned Magistrate after consideration of the entire evidence on record remains a possible view of the matter and cannot be said to be entirely unjustified.

Apart from the observations made by the learned Magistrate, it is noticed from the statement of wife PW-2 Naini Devi that she had no direct complaint against her husband and, according to her, the husband was only instigated by her in-laws, else there was no dispute with her husband; and she has denied the suggestion of being not willing to live with her husband. The husband, accused Ramchandra too, while deposing as DW-1 stated his willingness to continue with the matrimony.

In the overall fact situation, there appears no cause to grant leave to appeal in this matter.

The petition for leave to appeal is, therefore, rejected.

MK **(DINESH MAHESHWARI),J.**